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ABSTRACT

On July 26, 1990, Congress enacted the Americans with Disabilities Act (ADA). Considered by many to be the most sweeping civil rights legislation since the Civil Rights Act of 1964, the ADA applied to virtually all aspects of society, including public and private sector businesses and organizations. Public service organizations were also affected, and this included law enforcement agencies. In the ten years since the passage of the ADA, volumes of literature have been written and numerous research projects conducted concerning its impact. Unfortunately, very little of this effort dealt with the effect of the ADA on law enforcement operations.

This thesis explored the available literature to discover what research, legal material, and other written sources existed. Unfortunately, very little material was available, especially in the realm of scholarly research. Legal material regarding the ADA and police operations is slowly accumulating, and will eventually serve to define the boundaries of the ADA in relation to police operations. Various literary sources provided analysis of the Act and generally offered suggestions for law enforcement agencies to assist them in complying with the provisions of the ADA. However, scholarly research was sorely lacking; thus, an exploratory survey was designed and conducted. This survey polled a national sample of law enforcement agencies and determined their policy and operational responses to the guidelines of the ADA.

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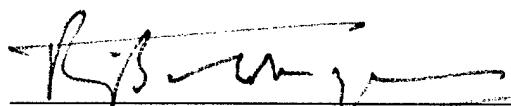
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ANALYSIS OF TITLE II ISSUES AND AN EXPLORATORY SURVEY

By

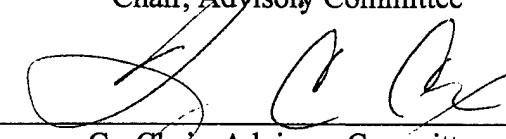
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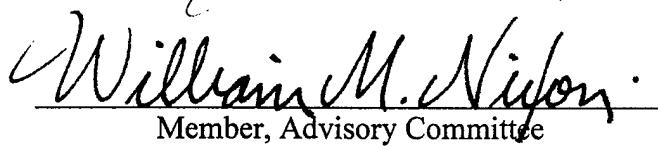
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POLICE POLICY AND THE AMERICANS WITH DISABILITIES ACT:
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By

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CHAPTER ONE

INTRODUCTION

On July 26, 1990, Act July 26, 1990, Public Law 101-336, Section 2, 104 Stat. 328 was enacted by the United States Congress. More commonly known as the Americans with Disabilities Act of 1990 (ADA), this legislation involved sweeping changes “to establish a clear and comprehensive prohibition of discrimination on the basis of disability...and to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities” (42 USC §12101). This new law included prohibitions against discrimination in employment, public services, public accommodations and services operated by private entities, and telecommunications; additionally Title V outlined miscellaneous other provisions covered under this law. As the International Association of Chiefs of Police (IACP) noted, “The passage of the Americans with Disabilities Act (ADA) into law in 1990 marked the most significant expansion of the Civil Rights Act since 1964. It has provided the legal means for nearly 55 million Americans with disabilities to more fully participate in, and contribute to American society. The ADA (1990) placed many new responsibilities on both the public and private sectors, including state and local governments” (IACP Legislative Alert, 1999: 21). Of special interest to law enforcement agencies nationwide were Title I, Employment and Title II, Public Services.

Title I, Employment, sought to eliminate disability discrimination through employment practices in business entities of all sizes, both public and private. According to Title I, “No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment” [42 USC §12112 (a)]. This provision involved all organizations employing 15 or more persons, thus it is applicable to the great majority of law enforcement agencies across the country. In order to meet the standards of this Act, law enforcement agencies (and all other organizations) are required to make reasonable accommodations to the known physical or mental disabilities of an otherwise qualified person, unless doing so would impose an undue hardship. Although Title I might not include the smallest of law enforcement agencies, Title II is all-inclusive in its applicability.

Title II deals with Public Services, and since policing is considered a public service, this includes law enforcement agencies of all sizes and locations. As noted in the Act, “Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity” (42 USC §12132). This requirement was implemented on July 26, 1992, two years after initial passage of the Act. For purposes of this legislation, police activities such as arrest, interview, and interrogation are considered programs or services,

despite the fact most people don't actively seek them out for their benefit. For law enforcement agencies, this meant a possible change in the conduct of operations, so that individuals with disabilities wouldn't be unfairly discriminated against.

It has now been over 10 years since the passage of the Americans with Disabilities Act, and volumes of text have been compiled about its scope, applicability, and implications for all manner of public agencies. Additionally, researchers have delved into various features of the Act and examined its impact on organizations. Surprisingly, police organizations have received scant literary coverage during this period, despite the implications of the ADA (1990) for employment practices and operational conduct. The available literature can generally be classified into one of three topics: 1) discussion of employment implications and recommendations; 2) examination of operational issues and recommendations; and 3) scholarly research, although this category is virtually non-existent for policing. Additionally, a growing body of legal cases is beginning to slowly define the parameters of the Act and elucidate the vagaries inherent in such broad and sweeping legislation.

Considering the general lack of information on law enforcement policy and the Americans with Disabilities Act (1990), this thesis will serve three purposes. First, the ADA (1990) will be discussed in terms of the Title II implications for police policy, the legal proceedings relevant to this area, and the scholarly research available. This analysis will provide a summary of the applicable literature available concerning police policy and the ADA (1990). Second, the findings of a national survey of law enforcement agencies

concerning police disability policy will be presented. The results of this groundbreaking study will shed light on the responses of law enforcement agencies to persons with disabilities and the ADA (1990). Finally, the results of the survey will be discussed with regards to ADA (1990) implications and suggestions for further research will be offered. By discussing these three areas, this thesis will provide a better understanding of police policy in an area with little background or current research. This task begins with a review of the relevant literature.

CHAPTER TWO

REVIEW OF THE LITERATURE

TITLE I: EMPLOYMENT

Although the purpose of this thesis is not to examine in detail the employment implications of the ADA (1990), it is still fair to briefly discuss the literature available on that topic since it comprises the bulk of material currently written about policing and disability discrimination. Most of this literature involves analysis of the implications of the Act (1990) on police employment practices, and generally offers suggestions to meet the intent of the legislation; some recommendations are very specific, others are more generic in nature.

Generally, most of the literature analyzed the ADA (1990) and its possible impact on hiring. These were the basic conclusions reached in most of the literature:

- 1) Pre-employment medical inquiries and examinations, and psychological evaluations cannot be conducted until after an offer of employment has been made.
- 2) Persons must be hired based on whether or not they meet the established prerequisites for the position and can perform the “essential functions” of the job.
- 3) Employers must provide reasonable accommodation for applicants, although this is a somewhat vague requirement.
- 4) Job-related agility tests may be given any time during the hiring process.

5) Drug testing is not considered a medical exam under the ADA (1990) and can be given at any time (Litchford, 1991; Higginbotham, 1991; Epps, 1991; Rubin, 1994). In addition, several works offered suggestions for police administrators. For example, the ADA (1990) provides three defenses for employers charged with disability discrimination:

- 1) The qualification standards or selection criteria are job-related and consistent with business necessity; in other words, the standard in question is a bona fide occupational qualification (Cascio, 1998: 18).
- 2) The disabled person, if hired, would pose a threat to himself or herself or the public.
- 3) The employer is unable to reasonably accommodate the person with a disability (Higginbotham, 1991: 29).

To avoid complaints of discrimination, other proposals were made, including redesign of the selection process, creation of separate files for medical information, and training for persons who might conduct applicant interviews (Litchford, 1991: 11-12). While these articles provide an adequate summary of the ADA (1990) and its implications for law enforcement, organizations such as the International Association of Chiefs of Police (IACP) continue to educate police agencies and fight for amendments to the legislation.

Education is a key component to the success of law enforcement agencies as they attempt to comply with the hiring procedures outlined by the ADA (1990), and the literature plays an important role. From the beginning, the IACP provided coverage of the ADA (1990), and made the following pledges: to develop an ADA (1990)

information package; to incorporate ADA (1990) implementation strategies in applicable existing IACP training programs; to continue to publish relevant ADA information in its magazine The Police Chief; and to film ADA-related segments for use in police training (Vaughn, 1991: 6). In addition to this guarantee of educational support, the IACP continues to lobby Congress for amendments to the ADA (1990) legislation. The most recent lobbying efforts encompassed two areas. “First, in the area of Title I employment requirements, public safety employees should be exempted from provisions that require a conditional offer of employment be made to a prospective applicant before the employer may legally perform certain necessary physical and mental evaluations....Second, in the area of services to be provided to citizens by law enforcement agencies, exceptions should be made from the universal applicability of accessibility and equipment requirements for correctional facilities. Specifically, availability of limited, specialized facilities should be sufficient to comply with the law” (IACP, 1999: 21). This commitment to education and reform should ensure that law enforcement agencies receive the latest information available concerning ADA (1990); it is incumbent upon the agency to act on the information.

Title I of the ADA (1990) prohibits employment discrimination, and the law enforcement literature has focused heavily on these exclusions. Most of the literature is of an analytical or educational nature and provides police administrators with a better understanding of the ADA (1990) and its implications while often providing suggestions

for compliance. However, Title II of the ADA (1990) involves public services, and this encompasses police operations, and the literature has also focused on this aspect.

TITLE II: PUBLIC SERVICES

The true focus of this thesis is on the examination of Title II of the ADA (1990) and its impact on police policy and operations. Although Title I topics receive the lion's share of attention in the literature, some consideration has also been given to policy development and operational matters. Just like the Title I literature, most of the coverage of the public services issue revolves around discussion concerning the implications of the Act (1990) on operational policy and procedure while often presenting suggestions which would comply with the ADA (1990) guidelines. Some proposals are very detailed and specific, while other offerings are of a more generic nature, but all are intended to assist law enforcement agencies in dealing with the requirements set forth in the ADA (1990). In some cases, police agencies were developing policies to deal with the disabled long before the ADA (1990) became law.

Over 10 years prior to the passage of the ADA (1990) legislation, the New York City Police Department developed its own crime prevention program for the handicapped. This initiative began when an officer realized no crime prevention materials existed for the blind. Based on this lack of resources, two members of the crime prevention section were tasked with developing such material; in order to do so, they met with representative from major agencies in the city which dealt with the handicapped to seek their input. The program was developed with a two-pronged focus.

"Primarily an information and education program directed toward the handicapped, it would also serve to heighten police awareness and sensitivity when dealing with this special public. Thus, the program encompasses materials and services for handicapped persons, as well as training and information for police officers" (Perry, 1981: 24).

Based on these goals, the program was developed with nine separate components:

- 1) Crime prevention resources for the handicapped, including large-print booklets, as well as Braille and cassette tape information.
- 2) Crime prevention lectures, upon request.
- 3) Security surveys of homes and businesses, with reports, which are normally written, given via cassette tape to blind persons.
- 4) Special telephones, with wheelchair access, were installed in police headquarters and various public buildings throughout the city.
- 5) A training video and guide were developed to educate police officers on how to deal with persons with hearing disabilities.
- 6) Six hours of instruction on how to deal with the handicapped was added to the police academy's instruction for new recruits.
- 7) Sign language courses were offered free of charge for officers.
- 8) The auxiliary police began to admit handicapped persons into membership and used their skills in radio communications and administrative and clerical duties.
- 9) The New York Society for the Deaf offered the police use of its 24-hour phone service to receive information on dealing with handicapped persons (Perry, 1981: 24-25).

Considering the population of New York City, development of a program to assist its handicapped citizens was a long overdue idea. However, if the literature is any indication, New York City's initiative was the exception rather than the rule. However, Congress forced awareness of disability issues on police agencies nationwide when it enacted the Americans with Disabilities Act (1990).

During the initial phase following passage of the ADA (1990), several articles appeared which outlined the implications of the Act (1990) for police agencies. While most of the articles focused on the employment consequences of Title I, others sought to shed light on the ramifications of Title II. Two of the primary sources for this information were the police-oriented publications The Police Chief and the FBI Law Enforcement Bulletin.

In a March 1992 article, the Chief's Counsel section of The Police Chief focused on Title II requirements. According to the author, "As police executives across the country rush to ensure compliance with the employment requirements of the Americans with Disabilities Act (ADA), it is critical that they do not ignore the non-employment provisions of the act" (Santos, 1992: 10). The author briefly discussed the general conditions of Title II, which encompass all governmental activities and anything a public entity does, to include all programs and services. In addition to this general overview of Title II, the author provided a summary of the detailed requirements.

Although the ADA (1990) is very broad in its language, some specific steps are mandatory. First, all public entities were to conduct a self-evaluation no later than

January 26, 1993, and those employing 50 or more persons were to maintain this evaluation on file for no less than three years. All public entities were also required to provide notice to the public concerning their rights and protections afforded by the ADA (1990). All public entities employing more than 50 persons were also required to designate an employee to coordinate compliance efforts and to investigate issue of non-compliance; additionally, a grievance procedure had to be developed and published to provide for prompt and equitable resolution of complaints. Although the Act (1990) provides for general prohibition against discrimination, certain standards are of particular concern to police. The Act (1990) does not mandate training for police officers, but it does require them to make appropriate efforts to determine whether questionable behavior or unconsciousness is the result of a disability. Additionally, any policy or procedure which would serve to screen out individuals with disabilities or impose an undue burden on them is prohibited. Public entities are also required to provide qualified interpreters as necessary to provide services for the disabled; the same provision involves reading devices. In addition to policies and procedures, existing facilities had to be made accessible to persons with disabilities, so that all programs and services were usable; this requirement was specific in its direction, but offered broad options for implementation. Any public entity employing 50 or more persons was required to develop a transition plan, with public input, detailing structural changes needed to achieve accessibility, if such changes were identified. Additionally, any new construction must be accessible, at least in part, to persons with disabilities (Santos, 1992: 10-11). These requirements under

Title II were broad in scope and forced police departments to consider changes in their operations to ensure compliance.

In the initial years following passage of the ADA (1990), confusion on the part of police agencies was typical since the Act (1990) was general in nature and failed to outline specific responsibilities in most cases. As the legislative section of The Police Chief noted, “This is still a very nebulous area of the law, requiring close monitoring by chiefs and their legal advisors as it continues to develop” (Kime, 1994: 10). The same article offered the following advice to deal with potential issues: “One way law enforcement agencies can begin to anticipate the needs of the disabled is to hold community outreach meetings with organizations that provide services to the disabled. By learning of the problem areas in advance, agencies will be better prepared to deal with them as they arise, thus limiting their liability” Kime, 1994: 10). As the Act (1990) was analyzed and better understood, more specific recommendations became available to police administrators and trainers.

Initially, the legal background for the ADA (1990) was unclear, and suggestions for countering suits alleging disability discrimination were offered. The first of these revolves around the question of whether or not the act of arrest is a “program” as put forth in the ADA (1990). Although case law was inconclusive on this matter at the time of this article (1995), the courts have since cleared up any confusion. In Pennsylvania Department of Corrections v. Yeskey, (1998), the Supreme Court unanimously decided that state prisons are considered “public entities,” as envisioned in the ADA (1990).

Additionally, prison programs and services, while not fitting the typical mold, are still covered under ADA (1990) guidelines. By inference, police agencies would be considered public entities, and the act of arrest would be considered a service or program offered to the public, even if such a service was not voluntarily sought out. The second argument submitted involved the possible constitutionality of the Act (1990) since it was somewhat vague in its direction, while broadly sweeping in its application. This reasoning was shown to be invalid based on the Yeskey (1998) case which the Supreme Court ruled on; nowhere was the constitutionality of the ADA (1990) challenged by the Court. Third, a department might argue that compliance with the Act (1990) is unduly burdensome, to the extent that “the accommodation needed or requested would be so expensive it would materially interfere with the department’s normal operation” (Close, 1995: 10). However, this is a risky defense since the burden of proof rests with the department, and the ADA (1990) offers multiple suggestions for compliance, some of which are monetarily insignificant. Although the author suggested these arguments, he also had the foresight to realize most of them might not prove defensible as the courts interpreted the Act (1990). Therefore, training to deal with persons with disabilities was also suggested.

According to Close (1995), “In order to avoid claims of discrimination, then, it is essential that police departments effectively train personnel to recognize disabilities” (Close, 1995: 10). Training was suggested to deal with the following persons with disabilities:

- 1) Blind or visually impaired individuals, especially concentrating on how to properly give written Miranda warnings and take written statements.
- 2) Deaf or hard-of-hearing individuals, with a focus on use of basic communications skills to obtain information and the use of qualified interpreters.
- 3) Diabetics, emphasizing recognition of the difference between a person suffering from diabetes and one who is intoxicated.
- 4) Epilepsy sufferers, highlighting identification and reaction to the disease since diagnosis can be difficult.
- 5) Stroke victims, with training similar to that for epilepsy.
- 6) Persons with prostheses, with the primary emphasis on restraint and transportation.
- 7) Wheelchair users, again focusing on transportation and lawful restraint.
- 8) Mentally ill individuals (Close, 1995: 10).

While initial articles discussed the implications of Title II and general responses to it, this was one of the first to offer somewhat detailed suggestions for training in order to meet compliance and avoid claims of disability discrimination. However, even the most well developed policy or training program can run into unforeseen problems.

While numerous police agencies have developed policies and programs to meet the intent of Title II of the ADA (1990), occasions sometimes arise which fall outside their purview; a mass protest by disabled individuals is just such an instance. Most police agencies are capable of handling the typical arrest of a person with a disability, but when the issue involves arrest of dozens, or even in excess of a hundred, such persons, most

agencies are unprepared. Each year the disabled group ADAPT (Americans Disabled for Attendant Programs Today) protests at the American Health Care Association (AHCA) Convention, in whatever city it happens to occur. Previous protests have turned disorderly and violent; the 1991, 1992, and 1993 Conventions were marked by over 100 arrests in each city (Monahan, 1997: 47). The 1994 Convention was held in Las Vegas, and 432 persons were arrested, primarily without incident and without any lawsuits being filed (as of February 1997). The Las Vegas Metropolitan Police Department LVMPD) accomplished this feat by learning from the mistakes made at previous Conventions and through prior planning and coordination.

The key to the success of the LVMPD experience was extremely thorough prior planning, involving numerous agencies for cooperation and guidance. A joint Tactical Operations Plan for the event united the various jurisdictions involved with the affair; additionally, security departments of the Convention sites were brought into the loop. By taking these steps, the LVMPD ensured all law enforcement parties involved were on the same page operationally. To limit problems during encounters, the department solicited the assistance of a for-profit hospital to train its officers in proper procedures for handling persons with disabilities. In addition to educating the officers, this training had two benefits: "First, the officers had great confidence in themselves and their commanders, and were not prone to under- or overreact when arresting persons with disabilities; second, the protesters were so impressed with the officers' compassion and professionalism that they did not offer the resistance that had characterized previous

protests" (Monahan, 1997: 47). While training and coordination was an important factor, logistics also required careful planning.

Logistically, the LVMPD was unprepared to handle the transportation and detention requirement for 200-400 disabled arrestees. To remedy this problem, they established a temporary detention facility (TDF) near the Convention/protest site. The TDF was equipped with wheelchair accessible bathrooms, TDD telephones, and a staffed medical screening facility; all persons arrested were processed through this facility. Although the TDF was capable of housing arrestees overnight, most were released on their own recognizance. At the site of the protest, extra wheelchairs and stretchers were available to transport arrestees, if so needed. In addition, certified American Sign Language interpreters were deployed with the police to provide signed instructions as police gave them verbally. Medical technicians were also deployed to provide on-site triage and medical advice to commanders (Monahan, 1997: 48). To maintain a certain amount of continuity, the same staff of police officers worked the event the entire week. Although this created some difficulties with scheduling personnel, the benefits were apparent as a rapport between officers and protesters was often established. Finally, the LVMPD provided a public relations liaison to provide the media with factual reports about what was happening and to prevent incorrect speculation about police operations.

While mass protests involving disabled individuals are rare, they highlight the need for proper planning and coordination to avoid potential lawsuits based on civil rights and ADA (1990) claims. The LVMPD accomplished this task through

comprehensive prior planning and creative use of resources. By enlisting the services of specialists in the field, they were able to train their officers to properly deal with the protesters. Erecting a temporary detention facility near the site of the protest solved the issue of transportation and detention. Utilizing the same police cadre ensured unity among the squads, and often led to rapport between the police and protesters, which likely led to reduced violence. Finally, the police kept the media informed of all their actions. This effort by the LVMPD highlights the kind of planning and coordination required when standard operational plans are overcome by events such as a mass protest. The author summed it up this way, “Preparation is the key to success. Such things as prisoner transport vehicles and accessible restrooms cannot be taken for granted. The costs of not considering these variables and ignoring the ADA (1990) include adverse civil judgments and substantial ADA (1990) penalties, not to mention unfavorable media coverage. To paraphrase an old oil filter commercial: you can pay up now or you can pay up later” (Monahan, 1997: 49). In addition to numerous articles published concerning Title II, several lengthier works have also been accomplished.

Several years prior to passage of the ADA (1990), the Police Executive Research Forum (PERF) published a significant work on improving police response to individuals with mental disabilities. Although this selection was obviously not authored with ADA (1990) compliance in mind, the findings and suggestions found in it are still applicable today. Titled Special Care: Improving the Police Response to the Mentally Disabled (1986), the book examines the full spectrum of the issue, beginning with an introduction

to the problem and concluding with a planning guide for developing a response strategy. The comprehensive nature of this volume provides excellent guidance for police administrators.

In the first section of the book, the author lays the foundation by examining the problem facing the police. This is initially accomplished through an introduction to the problem, with a specific discussion concerning the homeless disabled (Murphy, 1986: 26-28). Once the problem was established, the author examined various police responses to the issue. Finally, three model police programs were discussed; they involved law enforcement agencies in Madison, Wisconsin; Galveston County, Texas; and Birmingham, Alabama (Murphy, 1986: 75-104). Once the groundwork was laid, the author moved on to provide planning and operational considerations.

The true value of this book lies in its suggestions and recommendations for police administrators laid out in the second section. To properly deal with persons with mental disabilities, law enforcement agencies need an effective response strategy, and the author devotes a significant portion of the book to this matter. This section begins by offering suggestions for developing an effective response strategy for agencies. Once that broad goal is accomplished, the more specific tasks are covered during a discussion on operational procedures. Additionally, the Appendices are full of functional information such as exemplary directives actually in use and suggested training materials in both video and written form (Murphy, 1986).

Although this work pre-dates the passage of the ADA (1990) legislation by several years, it is still a beneficial piece of literature for police administrators. The author provides an ample overview of the problem, as well as a nice discussion of police responses and model programs. Once the foundation was established, the author applied the information to the development of an effective response strategy, to include operational considerations. The wealth of information in this work makes it an excellent source for law enforcement agencies seeking to develop or update their mental disability policy; however, more recent literature also exists.

As organizations across the country re-examined their procedures relative to persons with disabilities, law enforcement was no exception; one book, Disabled Offenders (Stop, Search and Arrest) (Bolin et al., 1997) provided a very comprehensive examination of the problem. This composition presented a detailed discussion on procedures for dealing with persons with disabilities. In addition, it provided a brief summary of ADA-related legal matters and thoroughly discussed the legislation and its impact on police operations.

Disabled Offenders (Bolin et al., 1997) provided an exceptionally descriptive section on dealing with persons with disabilities. The chapter covered approach and interview, searching and handcuffing, and transportation of persons with various disabilities, although mobility impairments were the most common. In most cases, detailed explanations were given and in many instances photographic examples were included. The presentation of the techniques was well done and very thorough.

Additionally, use of force considerations and defensive tactics were carefully discussed, and also included photos. Finally, consideration was given to the handling of service animals, which was a rare topic of coverage in the literature. While this wealth of information would have sufficed to make the book worthwhile, a comprehensive coverage of ADA (1990) itself was included.

Although the primary purpose of the book was to provide instruction in police encounters with persons with disabilities (as evidenced by the title), the book also provided a methodical treatment of ADA-related topics in its appendices. First, relevant Section 1983 and ADA (1990) claims were discussed, which afford readers the opportunity to review recent legal decisions concerning disabled policy. Additionally, current (1997) state statutes were listed so that police administrators can check the applicable laws in their jurisdictions. Most importantly, the authors conduct a detailed examination of the ADA (1990) and its implementing instructions, paying particular attention to the portions which might be pertinent to police operations. Considering the wealth of information, the appendices to this book would have made the book valuable by themselves. The combination of extensive procedural discussions and extensive legal coverage merits serious consideration for inclusion of this book into any police policy library. The great majority of information on police policy is in written form, but the video format is also used on occasion.

One such instance of the use of video is the Police Executive Research Forum's Miranda and the Deaf Suspect. As the name implies, this offering discusses the

implications of attempting to provide a deaf suspect's Miranda warnings. The video cautions that utilizing lip reading or a sign language interpreter, or having the suspect read the warnings, may not be enough to ensure admissibility of evidence in court; these conclusions were based on examination of homicide cases involving deaf suspects. The video offers two possible solutions to the problem: 1) make sure a certified sign language interpreter and an attorney are present before attempting to administer the warnings; and 2) videotape the proceedings. Additionally, the video stresses ensuring the deaf suspect fully understands the warnings, through whatever means are necessary; unfortunately, the producers failed to mention specific means to accomplish this. Overall, this was a very simple production, but still valuable for police officers charged with questioning a deaf suspect. By following the suggestions, evidence collected just might stand up in court.

While literature related to Title II of the ADA (1990) is generally in short supply, it does exist, and the passage of time will likely see more published. The literature that is to be found ranges from general interpretations of the ADA (1990) and what it means for police policy, to very specific, photograph-enhanced illustrations concerning handling of persons with disabilities. Overall, the quality of the works is commendable, especially the Disabled Offenders selection (Bolin et al., 1997). The accumulation of literature has taken time after the passage of the ADA(1990); the interpretation of the legislation in the courts has followed a similar route.

ADA CASE LAW

The Americans with Disabilities Act (1990) provided legal protection specifically for individuals with disabilities in an attempt to curb discrimination against them; with this newfound protection came lawsuits alleging discrimination based on disabilities. Considering the expansive scope of the ADA (1990), it was necessarily somewhat vague in its requirements, so legal interpretation has been required in many areas, and policing is no exception. While relevant ADA (1990) matters might be discussed in various legal reviews, the legal material in this thesis was reported and discussed in police-related publications in order to limit the analysis to the cases deemed most relevant to this project. Although the legislation is relatively new, lawsuits have been filed and a series of legal determinations has slowly begun to define the parameters of the Act (1990) in regards to police employment and operational practices.

The first recorded complaint against a police agency occurred in June 1992, not long after the legislation was passed. According to The Police Chief news section, a deaf Clearwater, Florida man was arrested and charged with simple battery; the man filed a complaint pursuant to the Americans with Disabilities Act (1990), alleging discrimination since the officers were unfamiliar with American Sign Language and had trouble communicating with him. Although departmental policy was followed and no statutes were violated, the department was tasked to work with the Department of Justice Civil Rights Division to remedy the problem. “The case was resolved with the department’s subsequent establishment of a written policy on effective communication in police

situations involving persons who are deaf or hard of hearing. DOJ has cited the policy as a model for law enforcement agencies throughout the United States" (IACP News, 1994: 61). The department's timely response to the complaint alleviated the problem and likely staved off future suits for discriminating against deaf or hard of hearing persons. Although this instance was merely a complaint against a police agency, it set the tone for future complaints and lawsuits.

In May of 1992, only months after ADA (1990) legislation took effect, Kansas City police officers arrested a quadriplegic man, Jeffrey Gorman, for trespassing. During this process, he was transported to the police station in a police van without wheelchair access and proper restraints. Additionally, prior to transportation, Gorman requested permission to empty his colostomy bag, but was denied. Due to his disability Gorman was unable to maintain himself upright on the bench, so the police tied him with his belt to a mesh wall behind the bench and also fastened a seatbelt around him. During transportation the belts came loose, and Gorman fell to the floor; the fall injured his shoulders and back severely enough to require surgery and also broke his urine bag, leaving him soaked in his own urine. Gorman filed suit under the ADA (1990) and the Rehabilitation Act of 1973, alleging "that the board members and the chief failed to provide a proper transportation vehicle to accommodate his condition, to modify department policies and procedures dealing with arrest and transportation to accommodate individuals with spinal cord injuries, and to institute proper training for Kansas City police officers on how to handle such arrestees. He claimed that the manner

of his post-arrest handling and transportation evidenced unlawful discrimination by all the defendants, including Becker who drove the police van that took him to the station. His complaint sought compensatory damages for physical and mental injuries, punitive damages, injunctive relief compelling the defendants to comply with the statutes, and attorney fees and costs" (Gorman v. Bartz, 1996). In the initial case, Gorman v. Bartz (1996), the court granted summary judgment to the defendants, reasoning primarily that Gorman did not meet the requirement of a "qualified individual with a disability" as outlined in the ADA (1990), based on the idea that he failed to meet eligibility requirements for the receipt of services since he did not volunteer for or actively seek arrest. Additionally, "The court also reasoned that Congress had not shown it intended to extend the statute to a core state function such as police work, citing in support Torcasio v. Murray (1995) (qualified immunity for state prison officials sued under the ADA)" (Gorman v. Bartz, 1996). Based on these interpretations, police officers and police agencies were virtually free to operate outside the guidelines of the ADA (1990). However, Gorman appealed the decision with somewhat different results.

The Federal Court of Appeals interpreted matters differently in Gorman's appeal, affirming in part, and reversing in part the decision of the District Court. In Pennsylvania Department of Corrections v. Yeskey (1998), the Supreme Court unanimously held that state prisons fall within the definition of "public entity" as intended by the ADA (1990). Additionally, although prison programs and services might not fit the typical mold, the Court determined excluding a person with a disability from receiving the benefits of

services or participating in a program was discriminatory. The Court of Appeals used this recent ruling to strike down the district court's arguments concerning "voluntarism" and qualified immunity for public entities, arguing that police agencies also fall within that definition. The Court of Appeals argued that the provisions of the ADA (1990) were indeed intended to protect disabled persons in general, to include arrestees. Ultimately, "the judgment dismissing all claims is vacated, and the conclusion of the district court that the ADA and the Rehabilitation Act do not cover Gorman's allegations is reversed. We affirm the dismissal of the claims against the defendants in their individual capacities on the basis of qualified immunity, and remand the official capacity claims against" (Gorman v. Bartz, 1998) the defendants.

Another of the first lawsuits brought in regards to police procedure and ADA (1990) violations involved arrest of a motorist, Roland Jackson, after a vehicle accident under the suspicion of operating a motor vehicle under the influence of alcohol or drugs. However, Jackson was not under the influence, but suffered from slurred speech and partial paralysis of his right side as the result of a stroke he suffered several years earlier. Although Jackson explained his condition at the site of the accident, he was still arrested and taken to the station, where he was given an alcohol sobriety test and was held for over two hours before being released. In Jackson v. Town of Sanford (1994), the plaintiff brought suit against the Town of Sanford alleging violations of ADA (1990) guidelines; he claimed his arrest "was an act of discrimination based on his disability" and he also charged the town with failure to properly train its officers to recognize symptoms of

disabilities and also failed to modify policies and procedures to comply with legislative guidelines. The Town moved for summary judgment, claiming that the guidelines of the ADA (1990) were not applicable to the facts in the case. The motion was denied, and the court noted, “That contention is plainly wrong. Title II of the ADA clearly applies to acts of discrimination by a public entity against a disabled individual. The Town and its police force are a public entity and the plaintiff is a qualified individual with a disability as those terms are defined in Title II of the ADA. The legislative history of the ADA demonstrates that Congress was concerned with unjustified arrests of disabled persons such as Jackson alleges here (Jackson v. Town of Sanford, 1994).” In this case, the court held that the plaintiff’s suit was indeed valid under the intent of the ADA (1990), marking a turn from the initial Gorman v. Bartz (1996) opinion. A similar decision was reached in the case of Barber v. Guay (1995).

In the case of Barber v. Guay (1995), police arrested Randolph Barber for theft during an argument with his landlord over ownership of items he possessed after he was perceived as drunk. Barber was receiving treatment at a local Veterans Administration hospital for psychological and alcohol problems, and brought suit against the police under the ADA (1990), alleging the deputy who arrested him denied him “proper police protection and fair treatment due to his psychological and alcohol problems” (Barber v. Guay, 1995). The defense moved for a summary judgment, finding that the plaintiff had a valid claim under the ADA (1990). This case, in conjunction with Jackson v. Town of Sanford (1994), set the stage for future lawsuits against police. Where the initial Gorman

v. Bartz (1996) decision essentially provided the police immunity, these cases stripped that away, and the Court of Appeals later decision on Gorman v. Bartz (1998) confirmed these decisions. In addition to these cases, others have slowly built the volume of case law involving ADA (1990) claims against the police.

In Lewis v. Truitt (1997), the court held that an arrestee could recover damages based on disability discrimination when officers knew of a hearing impairment but refused to communicate via writing, and then arrested the plaintiff for failure to follow verbal orders. In this instance, police officers accompanied a child protective services agent to a residence to remove a child from the custody of his grandfather, who was deaf. Police officers at the scene knew of the disability, but refused to communicate by any effective means, and they arrested the grandfather for interfering. The grandfather brought suit against the police alleging discrimination based on his disability. The court found that a question did exist as to whether the plaintiff was arrested due to his disability, and allowed the suit under the ADA (1990) to go forward (Lewis v. Truitt, 1997).

In another case involving hearing disabilities, a suspect in a sexual assault investigation was questioned by police at the station; although the suspect was deaf, no qualified interpreter was used during the questioning. In Calloway v. Boro of Glassboro Department of Police (2000), the court ruled that even non-custodial questioning required “reasonable accommodation” on the part of the police and thus allowed the suit to proceed

In a somewhat similar case (Rosen v. Montgomery County, Maryland, 1997) the courts held that police are not required to provide “auxiliary aids and services” to an arrestee during the course of an arrest prior to taking the arrestee to the police station. In this instance, the plaintiff, who was deaf, failed a field sobriety test, a breath test, and a chemical test. The plaintiff alleged disability discrimination based on the lack of auxiliary aids and services during his arrest, but the court noted, “The police do not have to get an interpreter before they can stop and shackle a fleeing bank robber, and they do not have to do so to stop a suspected drunk driver, conduct a field sobriety test, and make an arrest” (Rosen v. Montgomery County, Maryland, 1997).

Finally, the case of Patrice v. Murphy (1999) offers further guidance for police in dealing with persons with hearing disabilities; additionally, it supports the findings in Rosen v. Montgomery County, Maryland (1997). This case involved arrest of a deaf woman during investigation into a domestic violence case. Although no interpreter was available, the suspect signed a written note establishing probable cause for the arrest. Additionally, the officers conveyed her Miranda warnings in writing, and did not subject the arrestee to a custodial interrogation. The plaintiff’s discrimination claims under the ADA (1990) were dismissed, and the court noted that “where underlying criminal activity has occurred, such as a bank robbery, drunken driving, or domestic violence, and the officers are engaged in an on-the-street response, investigation, and arrest, forestalling all police activity until an interpreter can be located to aid communication with the deaf protagonist would be impractical and could jeopardize the police’s ability to act in time to

stop a fleeing suspect, physically control the situation, or interview witnesses at the scene" (Patrice v. Murphy, 1999). Although a significant amount of case law involves provisions for dealing with persons with hearing disabilities, other cases have tackled the issue of police use of deadly force.

Most cases involving police and ADA (1990) claims are non-violent in nature, but occasionally deadly force is used; Gohier v. Enright (1999) is a primary example. A police officer (Enright) responded to a disturbance call involving someone allegedly vandalizing vehicles along a city street; the suspect individual suffered from a mental illness. Upon arrival at the scene, the officer noticed a man walking down the middle of the street and the officer made an attempt to talk to the man. At this point, the man turned and walked toward the officer, with one hand behind his back. Despite evasive action by the officer and repeated orders to stop, the man eventually assaulted the officer with a knife, at which point he was shot and killed. The victim's family brought suit under the ADA (1990) against the police citing "failure to train" claims. The court decided that the family could not assert a claim based on disability discrimination. As the court noted, "Officer Enright did not use force on Mr. Lucero because he misconceived the lawful effects of his disability as criminal activity, inasmuch as Lucero's assaultive conduct was not lawful....Instead, Enright used force on Lucero while Lucero was committing an assault related to his disability (Gohier v. Enright, 1999). In this case, the officer's use of force was based on the unlawful conduct of the victim; therefore, the plaintiff could not go forth with an ADA (1990) suit.

The case of Hainze v. Richards (2000) is similar to Gohier (1999) in its details, as well as in the decision of the court. In this instance, police officers responded to an emergency call regarding a mentally ill man wielding a knife. When the officers arrived on the scene, Hainze approached the officers with the knife. After being warned twice to stop, he was shot twice; Hainze survived the shootings. The plaintiff brought suit under the ADA (1990) alleging disability discrimination based on officers failing to reasonably accommodate his mental disability. The case was dismissed when the court determined the police have no duty to provide reasonable accommodation in such circumstances. The Court stated that, "Title II does not apply to an officer's on-the-street responses to reported disturbances or other similar incidents, whether or not those calls involve subjects with mental disabilities, prior to the officer's securing the scene and ensuring that there is no threat to human life. Law enforcement personnel conducting in-the-field investigations already face the onerous task of frequently having to instantaneously identify, assess, and react to potentially life-threatening situations. To require the officers to factor in whether their actions are going to comply with the ADA (1990), in the presence of exigent circumstances and prior to securing the safety of themselves, other officers, and any nearby civilians, would pose an unnecessary risk to innocents" (Hainze v. Richards, 2000).

Although these cases are illustrative of the lawsuits brought against police departments in relation to ADA (1990) provisions, the guidelines set forth will likely still require further legal interpretation before a definite understanding is achieved. Even

then, lawsuits against police agencies will flourish as the courts define the boundaries of proper police conduct. Legislation regarding civil rights guidelines has existed for decades, and volumes of case law exists to clarify the boundaries, yet police agencies frequently find themselves in violation of various provisions of civil rights law. History is a fine teacher, so there are no reasonable grounds to believe suits based on ADA (1990) specifications will decrease in the future.

SCHOLARLY RESEARCH

Although the ADA (1990) legislation has barely existed for a decade, research is already being conducted into its impact on organizations; unfortunately, virtually none of this research has been directed toward law enforcement agencies. What little research is available deals with operational considerations for dealing with persons with disabilities, and even then doesn't directly address ADA (1990) concerns. One piece of research deals with police academy training, focusing specifically on instruction on dealing with persons with mental handicaps. The second article is somewhat applicable, but only in an indirect sense. It is a survey of police officers in England and Wales and it highlights the need for education among police forces to improve interviewing skills when dealing with children with disabilities.

According to James McAfee and Stephanie Musso (1995), there are approximately 8 million people with retardation in the United States; additionally, research has indicated up to 10 percent of prison inmates and up to 20 percent of the people on death row are mentally retarded (McAfee and Musso, 1995: 55). With these

facts in mind, they set out to determine the extent of training in state police academies which dealt with mental retardation. The authors based their study on the following four premises:

- 1) Police officers are likely to encounter persons with mental retardation early and often in their policing careers.
- 2) Police officers are not likely to recognize or understand the implications of mental retardation if they have not had specific training.
- 3) In the absence of training, police encounters with citizens with mental retardation are likely to be problematic.
- 4) Appropriate preservice police training is one step that could reduce the extent and severity of problems (McAfee and Musso, 1995: 55).

With those four premises in mind, the authors set out to determine the extent of training at state police academies dealing with mental retardation. Phone or telephone surveys were conducted with training academies in all 50 states, with the exception of Hawaii which did not have a police training academy; the largest city police department was used instead. They obtained responses from 49 academies, and discovered that at least 36 provided new officers with some type of disability training. However, only 16 academies “clearly and specifically addressed mental retardation” (McAfee and Musso, 1995: 59). Thirteen of the sixteen academies provided their training material, and this was analyzed for content based on six training topics: introduction to mental retardation; difference from other disabilities; determination of competence as a victim or witness;

comprehension and protection of legal rights; communication techniques; and understanding the use of community resources. Their analysis indicated every agency conducted training on at least one of these topics, and the Georgia and New Mexico academies provided the greatest range of training, covering five topics each (McAfee and Musso, 1995: 61-62). Based on these findings the authors drew several conclusions.

Considering the information they uncovered, the authors determined that "The most significant finding of this study was the lack of training about mental retardation provided to new recruits at the vast majority of the state academies. Fewer than a third of the respondents reported that such training existed" (McAfee and Musso, 1995: 63).

Given the sizable population of persons with mental retardation and the lack of comprehensive training discovered, the authors identified four training needs:

- 1) Inclusion of mental retardation training in the content prescribed by state standards bureaus. Such content should be developed by cooperative endeavors of police, professionals in the field of developmental disabilities, and advocates.
- 2) Increased dissemination; respondents indicated they did not know what others were doing.
- 3) Greater planned interactions between police officers and citizens with developmental disabilities. Only face-to-face interactions can bring true understanding.
- 4) Broader treatment. This should include topics such as victimization and witnesses, *Miranda* warnings, and crime prevention for persons with developmental disabilities (McAfee and Musso, 1995: 64).

While the authors of this study discovered a training deficiency concerning persons with mental retardation, this is not the only documented lack of training for police officers.

While the previous authors documented the lack of training concerning mental retardation, Aldridge and Wood (1999) discovered a lack of training and knowledge concerning conduct of interviews with child witnesses with disabilities. The authors surveyed 400 police officers in England and Wales, and received 104 survey responses. From these responses they determined that 97 percent presently conduct video interviews with children while the remaining three percent had done so in the past. Of the officers surveyed, fully 54 percent had interviewed a child with a disability, ranging from learning disabilities to hearing impairments to cerebral palsy; only 11 percent of the officers had received any specific training regarding interviewing children with disabilities. Of those who received training, it ranged from attendance at a conference presentation to a full two-day course (Aldridge and Wood, 1999: 36-39). In addition to these findings, the authors uncovered issues with comprehension of the needs of child witnesses with disabilities.

While training for officers was generally lacking, it was specifically reflected in an inability to comprehend the needs of child witnesses with disabilities. Lack of specific training for interviewing child witnesses was compounded by the fact that 56 percent of the officers received no training on the use of language use in interviews with child witnesses, while 55 percent felt their training related to language use was inadequate. This lack of training manifested itself in officer responses indicating a typical lack of

knowledge about how to cater to children with various disabilities (Aldridge and Wood, 1999: 40). The authors noted that, "Consideration of physical needs (e.g., access to facilities) is far more prevalent than consideration of the need to accommodate children's communication needs" (Aldridge and Wood, 1999: 41). In conclusion, the authors "recommend more extensive training both on children's language skills and in particular on the language skills of children with disabilities" (Aldridge and Wood, 1999: 41).

Although some research does exist concerning policing and the ADA (1990), there is a paucity of it. The general theme seems to center on a lack of training, and both of these studies highlight the relative lack of training for police officers in dealing with persons with disabilities, whether it involves mental retardation or child witness interview skills. The McAfee and Musso (1995) study is specifically applicable to American police agencies, while the Aldridge and Wood (1999) survey is not quite so applicable; however, the findings and conclusions drawn in it should provide some guidance for American police administrators and trainers. The major conclusion to be drawn from these studies is that more training in specific areas is needed for police; additionally, more research should be conducted into this area. This latter deduction resulted in the survey conducted for this thesis.

CHAPTER THREE

METHODOLOGY

SURVEY DESIGN

Considering the general lack of research into police policy and the ADA (1990), one goal of this thesis was to add to that body of work; therefore, a survey instrument which would measure police policy concerning persons with disabilities was constructed. This construction involved a three step process: 1) research was conducted to determine if similar survey instruments existed; 2) the available ADA (1990) literature was scoured for information relevant to the survey; and 3) the actual survey was constructed. An investigation into past research seemed an ideal starting point.

Rather than begin blindly, the initial step involved a search for similar survey instruments. Proven survey methodology is a valuable resource for a researcher, and incorporation of such material can save time as well as increase validity, depending, of course, on the validity of the source material. Additionally, it makes no sense to start from the beginning in every exploratory endeavor, so use of previously developed instruments is a well-accepted practice. Unfortunately, concerning police policy and ADA (1990), the body of literature is so scant that no previous survey instruments of a similar nature were discovered. To construct a survey, relevant ideas and concepts are required; the available ADA-related literature served as this source.

Although no similar survey instruments were found, literature was available concerning police policy and the ADA (1990), so this was combed for significant contributions. This literature included the legislation itself, legal case law, scholarly research, books, and articles from various police-oriented journals. Information from these sources ranged from highly specific descriptions of searching and handcuffing techniques to broad overviews of what constitutes a disability, and all manner of topics in between. Additionally, the disability policies of a local combined county/municipal law enforcement agency were examined to extract pertinent concepts from a procedure in actual use. From this foundation of knowledge, the basis of the survey instrument emerged. Once the initial research was conducted, the construction phase began.

Once adequate research was conducted to ensure a thorough, well-developed instrument, production of the survey began. The “up-front” research was accomplished for two reasons. First, the investigation was completed to assure the relevant areas concerning police policy and the ADA (1990) were discovered, and that nothing would be left out. Second, the exploration increases the validity of the instrument by incorporating concepts and ideas from the relevant literature, rather than relying on personal opinions and thoughts. The issue of validity is always of interest, and face validity is no exception. In this case, face validity was enhanced through the use of an actual police policy for research purposes. Additionally, two criminal justice professors (one a former police officer) and one law enforcement officer reviewed the instrument for

relevance and applicability. The survey was constructed to be simple in nature to aid in completion, with the goal of higher return percentages.

The goal of this survey instrument was to assess handicapped- and ADA-related police policy and procedures based on a national sample of law enforcement agencies. The instrument began by recording basic demographic information about the respondent, such as the number of sworn officers employed and the category of the agency (municipal, county, sheriff). Once the relevant demographic data was collected, the survey asked whether or not the agency had a policy for dealing with persons with handicaps, whether written or unwritten, how long the policy had existed, and the procedural topics it covered. Next the agency was queried regarding existence of state or local legislation or regulations regarding disabled persons and the areas covered. The survey continued, documenting police training and training topics, expert personnel, specialized equipment available, dietary and medication policies, transportation issues, access to facilities, and grievance/complaint procedures (See Appendix for the complete survey). The survey was mailed to 741 law enforcement agencies across the United States, based upon an Institute of Law and Justice (ILJ) mailing list for agencies with a service area population greater than 50,000. Once the survey was constructed, mailed, and completed by the respondents, analysis of the findings took place.

STATISTICAL ANALYSIS

While development of the survey instrument is a vital step in the research process, the analysis of the collected data is of equal importance, for that knowledge is the

culmination of the entire effort. For simple statistical analysis, this survey was primarily constructed using simple Yes/No and “Check the applicable category” type questions. In addition, several questions required a numerical answer, such as the number of sworn officers and total personnel employed and the size of the service area. Although the questions were designed with simple answers, there were also occasional locations for written elaboration if a respondent indicated “Other” on one of the categorical questions (i.e., Appendix, Question 10). Once the surveys were returned, the statistical analysis was accomplished.

Based on the design of the survey and the goals of the research, the statistical analysis was rather simple; Statistical Package for the Social Sciences (SPSS) 10.0.7 was utilized for this study. Since the great majority of the questions were Yes/No or categorical in nature, the response data was nominal in nature; the few questions requiring a numerical answer were of scale value. Based on the mostly Yes/No and categorical responses, those questions were coded as dummy variables. For example Question 9 of the survey was coded this way: 1 = Y, 2 = N, and 3 = N/A. The categorical responses were coded in a similar manner. The questions requiring a numerical answer were not coded in any way. Once the coding was accomplished, the analysis took place.

The purpose of this research was to assess handicapped- and ADA-related police policy on a national scale, so the survey data was analyzed with this goal in mind. Founded on this premise, the analysis of the collected data primarily involved case summaries and descriptive scrutiny. Although more complicated analysis is possible

with this data, accomplishing such procedures does not coincide with the objectives of this project. Despite the careful construction of the survey and the simple nature of the statistical procedures, all research involves limitations.

LIMITATIONS

Research of any type is hampered by limitations, and this project was no different. First, virtually no research has been conducted into this field, so no survey instruments were available for comparison. However, careful research into the available literature and actual police policies, combined with review by education and law enforcement professionals, served in large part to overcome this handicap. Second, mailing the survey contains inherent problems. The Institute of Law and Justice (ILJ) mailing list is only produced periodically, so some of the addresses become outdated between updates, and this can result in a failure to reach all intended respondents. To correct this problem, addresses were researched and corrected and new surveys mailed for those which were returned due to failure of delivery; only one of 741 surveys couldn't be delivered based on these efforts. Although the mail service is very reliable, mail does occasionally get lost or destroyed, and this can hamper response rates. Unfortunately, there is no way to control for this event, short of calling every agency by phone to verify receipt of the survey, and this was deemed impractical for this project. Additionally, the ILJ's mailing list was not completely accurate; numerous respondents indicated service area populations less than 50,000. However, those surveys still contained valuable information and were used in this study. Finally, response rates to mailed surveys are

typically low. As Frankfort-Nachmias and Nachmias (1997: 207) note, "The final disadvantage of a mail questionnaire- and perhaps its most serious problem- is that it is often difficult to obtain an adequate response rate....the response rate for a mail survey without follow-up is between 20 and 40 percent." Although the survey return percentages in this project support their statements, the number returned is still of sufficient magnitude to properly analyze. Just as no research is free of limitations, this survey was no exception. However, efforts were taken to minimize these restrictions, and the data collected still provides valuable insight into handicapped- and ADA-related police policy.

CHAPTER FOUR

FINDINGS

Based on the general lack of research into police policy and the ADA (1990), this survey was undertaken as an exploratory venture to determine the extent of ADA (1990)/disability influence on police policy and operations. First, basic demographic information was collected. After this, disability policy was examined, looking specifically at the presence and content of policies, specific personnel and equipment employed in light of ADA (1990) and disability concerns, and detention/confinement issues. Additionally, the existence of complaint procedures was also measured to determine compliance with specific ADA (1990) guidelines. Like most survey instruments, this one began by collecting generic demographic data.

DEMOGRAPHICS

The first goal of this survey was to gather appropriate demographic data on the respondents, including: the name, location, and type of agency; number of sworn officers and total personnel; and the size of the agency's service population. The names and locations of the agencies were used for tracking purposes, but this information will not be reported in this study. Of the 741 surveys mailed, 212 were returned, for a response rate of 28.6 percent. Of these, 122 were municipal agencies, 43 county, 4 consolidated municipal/county, 28 sheriff, and 15 "Others," which were mostly consolidated county/sheriff agencies. In most cases, the county respondents were sheriff's agencies;

therefore, for purposes of analysis, the county, sheriff, and “Other” categories will be combined. Additionally, the number of sworn officers employed by these agencies ranged from a minimum of 13 to a maximum of 3374, with a mean of 379 and a median figure of 153.5. The number of total employees was also determined, but this information will be utilized in later analysis. Finally, the sizes of the service area populations were determined; these ranged from 8000 to over 6 million persons. For a more complete analysis of agency demographics, see Table 1. Once the preliminary demographic data was collected, the survey continued by collecting information on the existence of police policies regarding persons with disabilities and applicable government guidelines.

Table 1. Police Agency Demographics

Agency Type	Municipal	County	Cons. Mun/County	Sheriff	Other	Cons. Sher/County
	122	43	4	28	15	86
Sworn Officers	0-49	50-99	100-249	250-499	500-999	1,000+
	37	39	53	43	20	20
Service Area Population	0-49,999	50,000-99,999	100,000-249,999	250,000-499,999	500,000-999,999	1,000,000+
	37	50	60	36	17	10

DISABILITY POLICY

In order to understand the national extent of police policies regarding disabilities, information was collected on the existence of both formal and informal policies, the length of time formal policies have existed, and knowledge of governmental regulations

or legislation, and the applicable areas covered by them. First, the presence of formal policies was measured, and 122 agencies (57.5 percent of respondents) maintained some type of formal policy. Additionally, 60 respondents indicated the existence of an informal policy; however, only 52 informal policies existed alone since 8 of these cases also reported the presence of a formal policy. For the formal policies, time in existence ranged from less than one year to a maximum of 24 years. Additionally, the topics covered by these formal policies were determined, and apprehension, detention/confinement, and transportation were the most common policy topics. In the “Other” category, topics covered ranged from collection and preservation of evidence to mental health evaluations and identification of disabilities. Besides the information on police policy existence, data was also collected on the knowledge police agencies possessed concerning applicable governmental regulations.

For police agencies to develop effective policies, it is important that administrators possess knowledge of the applicable government regulations or legislation; for this reason, this survey attempted to measure such knowledge. According to Bolin et al. (1997), 36 states and the District of Columbia had legislation (as of 1997) of some type which concerned handling of person with disabilities. Interestingly, only 57 percent of respondents (121 cases) noted the existence of such legislation, despite its direct impact on their agency. Based on the responses, there seems to be a bit of confusion among agencies. For example, three agencies from the same state responded in three vastly different ways. Two agencies answered Yes concerning the existence of

legislation, but one agency indicated only one applicable topic, while the second agency indicated three topics; the third agency responded No to the existence question. In addition to the basic existence information, specific questions were posed to the respondent to determine the topics covered by the legislation, which included: sight impairment/blind, hearing impairment/deaf, mobility impairment/non-ambulatory, mental illness, learning disability, and "Other." Among the "Other" responses, legislation governing developmental disabilities was noted; in addition, several agencies noted the ADA (1990) and its guidelines in this category. See Table 2 for a more comprehensive account of the responses. Considering the possible legal ramifications for violating these statutes, police administrators would be wise to become fully aware of the legislation governing their operations; additionally, training for all officers would be a prudent decision.

In order to meet the intended guidelines of legislation such as the ADA (1990) and various other governmental statutes, many law enforcement agencies provide training for their officers, and this training was measured as part of this survey. First, a basic question was posed to determine whether or not the agency provided any type of training concerning dealing with persons with disabilities. Of the 212 respondents, 157 agencies, or 74.1 percent, provided some manner of training. Once the extent of training was determined, the survey attempted to determine the basic content of the training material. For the agencies which responded positively, just under half provided training concerning sight impairments or blindness, while the majority offered training relating to hearing

impairments/deafness and mobility impairments. The overwhelming majority (96.1 percent), however, presented training pertaining to mental illness. The “Other” category was also utilized in 15 cases, and these agencies indicated training was conducted on topics ranging from dealing with epilepsy and Alzheimer’s disease to interacting with persons with diabetes or traumatic brain injuries. Interestingly, the percentage order of the training categories matched up exactly with the order of their counterpart questions concerning legislative guidelines, with mental illness receiving the highest response to both questions. See Table 2 for a more comprehensive listing of responses to both questions. Although police administrators and trainers might not be completely aware of all relevant legislation governing their operations, it does appear that they are tailoring their training to match the guidelines they do know about. Besides training for all officers, law enforcement agencies must sometimes rely on specialized personnel to deal with persons with disabilities.

Table 2. Legislative and Training Topics

	Blind/Sight Impairment	Hearing Impairment/ Deaf	Mobility Impairment	Mental Illness	Learning Disability	Other
Gov't Legislation	77	93	81	99	45	12
Training Topics	63.6%	76.9%	66.9%	81.8%	37.2%	9.9%
	78	106	87	151	56	15
	49.7%	67.5%	55.4%	96.1%	35.7%	9.6%

Note: Percentages are based on Yes responses: Legislation- 121; Training- 157.

Although general training for most officers will suffice for most encounters, sometimes situations dictate the need for personnel with special skills, such as sign language interpreters or text readers for the blind. This study sought to determine the extent of the use of such personnel, and the questionnaire asked about personnel directly employed by the agency, as well as personnel available through local agreements, whether formal or informal. Only 64 agencies responded that they employed personnel with specific skills for dealing with persons with disabilities; of these, sign language interpreters and Emergency Medical Technician (EMT)/medic-trained personnel were the most common, and virtually no agencies employed a certified text reader for the blind. In the "Other" category, most agencies employed mental health officials or crisis intervention staff members. While roughly 30 percent of agencies employ their own specialized personnel, many more (79.2 percent) have some type of local agreement in place to acquire the services of such personnel when needed. Again, sign language interpreters and medical personnel were the most commonly utilized personnel, although local agreements included far more certified text readers for the blind. In terms of the "Other" responses, mental health officials and psychiatric staff were again the most common personnel utilized. See Table 3 for more complete details concerning specialized personnel. Although personnel are the heart of a law enforcement agency, material resources are also important.

Table 3. Specialized Personnel

	Sign Language Interpreter	Certified Text Reader	EMT/Medic	Other
Agency Employed	38	3	27	23
	59.4%	4.7%	42.2%	35.9%
Local Agreement	150	29	71	26
	89.3%	17.3%	42.3%	15.5%

Note: Percentages are based on Yes responses: Agency- 64; Local- 168.

In addition to personnel, law enforcement agencies depend heavily on material resources, ranging from weapons to police cruisers to traffic citations; some of this is specialized for dealing with persons with disabilities. This survey attempted to determine the scope of law enforcement agency use of such equipment, and the questions measured the extent of agency ownership as well as local agreements for equipment utilization. Over 82 percent of agencies own specialized equipment, and the most common items were telephone devices for the deaf (TDD's), wheelchairs, and restraining devices; virtually no agencies utilized Braille forms. In the "Other" category, auto text readers and caption devices were mentioned. Only 37 percent of agencies indicated a local agreement for specialized equipment, but those that did indicated similar equipment utilization: TDD's, wheelchairs, and restraint devices were the most common, and Braille forms were still infrequently used. Unfortunately, this question was written with an "If, no..." qualifying statement based on a Yes response concerning owned equipment (See Appendix, Question 21). This qualifying statement should have been omitted, and likely caused numerous agencies to skip the question when they responded affirmatively to the ownership question, regardless of the presence of a local agreement for specialized

equipment. For this reason, the results of the local agreement questions are quite likely lower than the actual numbers. Table 4 offers the inclusive results of the specialized equipment questions. While specialized personnel and resources are needed to interact with persons with disabilities, specially modified and accessible facilities are also important. As mentioned earlier, police transportation is also an important factor to consider.

Table 4. Specialized Equipment

	TDD	Braille Forms	Wheelchair	Restraint Devices	Other
Agency Owned	171	6	64	74	9
	97.7%	3.4%	36.6%	42.3%	5.1%
Local Agreement	64	10	31	29	4
	81.0%	12.7%	39.2%	36.7%	5.1%

Note: Percentages are based on Yes responses: Agency- 175; Local- 79.

Although it is likely every police agency in the country maintains some type of motorized transportation capability, not all vehicles are suitable for transporting persons with disabilities; this study investigated this problem by determining what type of transportation assets law enforcement agencies utilized. Of the 212 respondents, 89 indicated the use of internal assets for transportation, whether it was a squad car or an arrest van, or some specialized vehicle. Another 38 noted the use of assets external to the agency, and in many cases this involved medical transportation of some type, although the use of special public transportation was also mentioned. Finally, 82 of the agencies

indicated they used both internal and external transportation assets to handle persons with disabilities. Even after transportation issues are solved, accessible facilities are still required for processing and confinement.

For all law enforcement agencies, processing arrestees involves the need for accessible facilities; for many this involves detention, or even extended confinement if the agency has the appropriate facilities. Due to these considerations, and in accordance with ADA (1990) guidelines, police facilities should be accessible to persons with disabilities, at least to the extent such persons can partake of programs and services just like their non-handicapped peers. Of the 212 respondents, 207 of them (97.6 percent) indicated their facilities were accessible to persons with disabilities; 5 agencies indicated their facilities were not accessible. In addition to basic facilities, many agencies manage or operate some type of detention or confinement facility. This study sought to record the extent of accessible detention/confinement facilities, as well as the existence of special dietary and medications policies. Unfortunately, no question was asked to determine the number of agencies operating such facilities. Numerous respondents answered these questions as not applicable, and most of them indicated some other agency operated the local detention facility. However, other respondents likely answered them as "No" based on the lack of such facilities, and thus the lack of policies related to holding persons for extended periods. Despite this issue, 135 agencies indicated the existence of accessible confinement facilities, while 39 indicated the question was not applicable since some other agency handled confinement. Additionally, 109 of the respondents maintained

some type of policy regarding dietary issues, while another 116 agencies responded affirmatively to the question concerning a confinement medications policy. While most of the agencies had accessible confinement facilities, 70 of the respondents specified an agreement with some other agency for the handling of confinement duties. Based on these responses, it seems that most law enforcement agencies either maintain their own accessible detention/confinement facilities or have access to them.

Even if a department provided all the training outlined in this study, maintained specialized personnel and equipment, and provided accessible facilities for all imaginable disabilities, complaints are still bound to occur occasionally in policing; it is an inherent part of the adversarial nature of the occupation. According to 28 Code of Federal regulations, Part 35 (1992), the Justice Department implementing instructions for ADA (1990), any organization employing 50 or more personnel must designate a person to handle ADA-related complaints [28 CFR §35.107(b) (1992)]. Based on the responses, only 17 of the 212 agencies employed fewer than 50 personnel, so all other agencies should maintain a designated person to handle ADA-related complaints. Only 177 of the agencies had an in-place procedure for handling internal (employment-related) complaints. For complaints generated external to the agency, 162 respondents indicated the existence of a course of action for handling them. Obviously, not all of the respondent agencies are complying with ADA (1990) guidelines in this matter.

While this survey was merely a simple exploration of the relationship between police policy and ADA-related matters, significant information was revealed. The fact

that only 57 percent of agencies operate under a formal policy is revealing, especially in light of the possible legal repercussions for violating applicable governmental legislation, not the least of which includes the ADA (1990); approximately the same percentage of agencies acknowledged the existence of such legislation. Despite these low figures, almost three-quarters of the respondent agencies provided some type of training for their personnel in regards to dealing with persons with disabilities. Additionally, agencies utilized specialized personnel and equipment to varying degrees, often obtaining the resources through local agreements. The same results hold true for transportation of persons with disabilities. This study also revealed that most agencies are accessible to persons with disabilities and either possess accessible detention/confinement facilities or have agreements in place for access to them. Finally, this study discovered that although most agencies have complaint procedures in place, some do not, in violation of ADA (1990) guidelines. Despite the simple nature of this survey, valuable data was collected, and this should pave the way for future research into other related areas.

CHAPTER FIVE

CONCLUSION

It has now been over a decade since the Americans with Disabilities Act of 1990 was enacted. It is arguably the most sweeping and influential civil rights legislation in decades, and its impact is felt throughout all sectors of society, both public and private, in small businesses and massive public agencies. The field of law enforcement was affected by this Act (1990), specifically by Title I, which involves employment, and by Title II, which covers public services; most police operations fall under the purview of this section. Although volumes of literature have been devoted to various aspects of the ADA (1990) and its implications, very little of this was accomplished with policing in mind. The goals of this thesis were three-fold: 1) to explore and summarize the available literature involving Title II and police policy, to include legal material and scholarly research; 2) to conduct a national survey to determine the extent of response in police policy concerning persons with disabilities and the ADA (1990), and to communicate the findings; and 3) to discuss the findings of the survey in light of the ADA (1990), and to offer suggestions for further research. With these guidelines, this project began by examining the relevant literature.

Although a significant amount of attention has been paid to the ADA (1990) by authors and researchers, very little of their work focused on the ADA (1990) as it relates to police policy. The literature which is available can generally be categorized into one

of three groups: Title I and Title II discussions, often with policy recommendations; established case law and pending legal battles; and scholarly research, which is virtually absent. In terms of the Title II writing, most of it focuses on discussions of the Act (1990) and its implications for policing, and in some cases suggestions are offered so agencies can better comply (Santos, 1992; Kime, 1994; Close, 1995; Bolin et al., 1997; Monahan, 1997). This literature is useful for its discussions and suggestions, but its volume is still lacking; the best work available seems to be Disabled Offenders (Stop, Search and Arrest) [Bolin et al., 1997]. This book was very comprehensive in its description of techniques and procedures for dealing with persons with disabilities; additionally, the ADA (1990) was discussed in detail and applicable legal cases and state legislation were discussed. The case law concerning police policy and the ADA (1990) is slowly building as more lawsuits are brought in court. As this happens, the boundaries of the Act (1990) become clearer in their implications for police operations. Finally, researchers have provided very little insight into the issue of police policy and the ADA (1990). What scant amount of literature is available focuses on very specific training areas (McAfee and Musso, 1995; Aldridge and Wood, 1999), and the Aldridge and Wood (1999) study, while valid, is applicable only indirectly to American policing since it was conducted in another country. Based on this general lack of literature, this project sought to increase the body of research available.

Once it was discovered that scholarly research into police policy and the ADA (1990) was sorely lacking, this project sought to help remedy the situation; to increase the

available body of literature, a national survey of law enforcement agencies was conducted to determine the law enforcement response in policy and resources concerning persons with disabilities and the ADA (1990). The survey instrument covered four general areas. First, basic demographic information was collected, including the size and type of agency, number of sworn officers and total persons employed, and the population of the service area. Once the demographic data was collected, the survey moved on to disability policy issues, and the first step was to determine the extent of policies and training. Survey questions asked whether or not the agencies operated based on a formal or informal policy, whether or not governmental legislation covered their operations, and whether or not training was conducted for officers. Additionally, specific topics were also discussed under each of those questions to provide a clearer picture of the topics covered by policy and training. The third area involved a determination of the specialized personnel and resources utilized by the agencies, to include transportation and accessible facilities. Once again, specific types of personnel and material resources were categorized so that a better sense of police response to disabled persons and the ADA (1990) could be gained. Finally, the survey concentrated on establishing the extent of several miscellaneous policies, to include confinement dietary and medication policy and internal and external complaint procedures. The full findings of this survey are presented in the previous chapter; however, some information stood out.

The information gained in this survey provides interesting insights into police operations. The demographic data was not especially revealing, although it was useful in

determining the types of police agencies involved in the survey. The rest of the survey was a different story, however. It was interesting to discover that only 57 percent of police agencies operate based on a formal policy, despite the possible severe legal ramifications for noncompliance with federal or state legislation. Despite a lack of a formal policy, roughly three quarters of police agencies provided some type of training for their personnel, and the overwhelming majority provided training concerning dealing with persons with mental disabilities. Additionally, police agencies utilized specialized personnel and unique equipment to varying degrees, and such use might be an organic capability within the agency or might exist based on a local agreement. It was more common for agencies to utilize local specialized personnel, but to own the specialized equipment, and agencies utilized both internal and external sources to transport persons with disabilities. The great majority (over 97 percent) of agencies indicated they were accessible to persons with disabilities, so the ADA (1990) is being complied with in this area. Additionally, most respondents either had accessible detention/confinement facilities or an agreement with another agency for use of them. Although this information by itself is interesting, it is useless without evaluation and application.

To be truly useful, the information discovered in this project must be utilized to improve police policy and procedures concerning persons with disabilities and the ADA (1990). Based on the data in the survey, combined with the analysis of the issues previously conducted, several recommendations can be made. First, law enforcement agencies should operate under a formal policy and should provide training for their

officers, especially in areas covered by relevant state legislation. Although a slight majority of agencies operates under a formal policy, the ADA (1990) and other legislation applies to all police agencies, and the penalties for violation can be severe. A well-developed formal policy and training program can never guarantee a violation will occur, but they can proactively attempt to stop them; otherwise an agency might find itself party to a suit based on “failure to properly train” grounds. Second, dealing with persons with disabilities often requires the use of personnel with special skills or specialized equipment. Most police departments cannot afford to hire a staff of special personnel for the occasional interaction with a person with a disability, but local agreements should be established for the use of such personnel. A little bit of planning and forethought might prevent a regrettable incident and costly lawsuit. Specialized equipment is generally more affordable, and certain items such as a telephone device for the deaf/TDD would be a wise investment; other specialized equipment, to include transportation assets, can again be accessed through local agreements. Agencies should also ensure the existence of accessible facilities, to include those used for detention and confinement, or have access to such facilities if the organic capability is absent. Finally, the ADA (1990) requires a dedicated person for handling disability-related complaints, although this doesn’t have to be the sole job of the individual; police agencies would be wise to appoint such a person to ensure speedy resolution to complaints. The information from the survey was valuable in its basic form, but the true value comes from applying the lessons learned from it in order to make police policy and procedure more effective.

Undoubtedly, the passage of the Americans with Disabilities Act (1990) had a great impact on most aspects of American society, and this included law enforcement operations. Title II of the Act (1990) dealt with public services, and the courts have ruled that police procedures such as arrest and interrogation qualify as services or programs as outlined in the legislation. Unfortunately, very little literature has been devoted to the topic of police policy, despite the implications inherent in the ADA (1990). Since the Act (1990) is relatively new, the case law concerning it is still in a defining stage; however, as more cases are decided, the legal system will better define the boundaries of the Act (1990) concerning police policy and procedure. Scholarly research is also scant, but this project attempted to partially alleviate this problem. The information collected during the survey provided valuable insights into the responses of police policy in regards to persons with disabilities and the ADA (1990). Additionally, this information allowed recommendations to be made so that law enforcement agencies can better comply with the mandates of the Act (1990). Although this project was successful in its goals, the need for further research is still great, and the possibility for groundbreaking study is still wide open; two areas for potential research stand out. First, a similar study of smaller law enforcement agencies would shed light on the responses by smaller agencies to persons with disabilities and the ADA (1990). Considering the large number of small law enforcement agencies in the country, this research would be groundbreaking in its own right. Second, research should be conducted on a national level to determine the extent to which law enforcement agencies interact with persons with disabilities,

specifically focusing on the types of disabilities encountered and the procedures utilized to overcome them. This research focus would provide invaluable information which would allow police administrators and trainers to tailor their curriculum to meet the needs of their officers and the public they serve. The information collected in this thesis is merely a starting point for exploration into police disability policy, but in combination with advanced research, it should provide law enforcement agencies with improved data so they can develop better policies and training material, thus providing better service to the disabled community, just as Congress intended when they enacted the ADA (1990).

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APPENDIX

Police Disabilities Policy Questionnaire
College of Justice and Safety
Eastern Kentucky University

DEMOGRAPHIC INFORMATION

1. What is the official name of your agency? _____

2. Please list the city and state where your agency is located. _____

3. How many sworn officers are employed by your agency? _____

4. How many total personnel (sworn officers and civilians) are employed by your agency? _____

5. What is the population of your agency's service area? _____

6. Which category applies to your agency?

- Municipal
- County
- Consolidated Municipal/County
- Sheriff's Agency
- Other (Please specify) _____

7. Does your agency have a formal/written policy for dealing with persons (suspects, arrestees) with disabilities/impairments?

Yes No

8. How many years has the current policy existed? _____

9. If a formal/written policy does not exist, does your agency operate under an informal/unwritten policy?

Yes No

10. If you responded Yes to either Question 6 or Question 8, please check each area which your policy covers:

- Approach and Interview
- Apprehension (Including restraint)
- Use of Force
- Transportation
- Detention/Confinement
- Other (Please specify) _____

11. Does your state/county/municipality have legislation or regulations outlining requirements for dealing with persons with disabilities?

Yes No

12. If Yes, which disabilities are covered:

- Sight Impairment/Blind
- Hearing Impairment/Deaf
- Mobility Impairment/Non-ambulatory
- Mental Illness
- Learning Disability
- Other (Please specify) _____

13. Does your agency train officers to identify disabilities/impairments and to interact with persons with disabilities?

Yes No

14. If Yes, please check all disabilities which you provide training for:

- Sight Impairment/Blind
 Hearing Impairment/Deaf
 Mobility Impairment/Non-ambulatory
 Mental Illness
 Learning Disability
 Other (Please specify) _____

15. Does your agency employ personnel (sworn officer or civilian) who are specifically trained to deal with persons with disabilities?

Yes No

16. If Yes, please indicate the number employed and the nature of their duties:

- Sign Language Interpreter
 Certified Text Reader for the Blind
 Emergency Medical Technician (EMT) or Paramedic Certified
 Other (Please specify) _____

17. Does your agency have a formal or informal arrangement with local agencies to utilize specialized persons such as sign language interpreters or certified text readers in the event their services are required?

Yes No

18. If Yes, please indicate the number agreed upon and the nature of their duties:

- Sign Language Interpreter
 Certified Text Readers for the Blind
 Emergency Medical Technician (EMT) or Paramedic Certified
 Other (Please specify) _____

19. Does your agency own and maintain specific equipment (for example, Telephone Device for the Deaf/TDD or Braille forms for the blind) for persons with disabilities?

Yes No

20. If Yes, please indicate which items apply:

- Telephone Device for the Deaf/TDD
 Braille Forms
 Wheelchair
 Restraint Devices (for example, straightjacket)
 Other (Please specify) _____

21. If No, does your agency have a formal or informal arrangement with local agencies to utilize specific equipment (for example, Telephone Device for the Deaf/TDD or Braille forms for the blind) for persons with disabilities?

Yes No

22. If Yes, please indicate which items apply:

- Telephone Device for the Deaf/TDD
 Braille Forms
 Wheelchair
 Restraint Devices (for example, straightjacket)
 Other (Please specify) _____

23. Does your agency have procedures in place to deal with arrestees in detention/confinement with dietary restrictions (for example, diabetics)?

Yes No

24. Does your agency have a policy for providing medications for those arrestees in detention/confinement who require them?

Yes No

25. How does your agency transport persons with mobility impairments?

- Internal/agency transportation resources (for example, patrol car or arrest van)
 External/community-based transportation resources (for example, ambulance or other specialized vehicle)

26. Is your agency accessible to persons with mobility impairments (for example, wheelchair)?

Yes No

27. Does your agency have adequate/accessible detention/confinement facilities for arrestees with disabilities?

Yes No

28. If No, does your agency have a formal or informal agreement with local agencies to provide adequate/accessible detention/confinement facilities for arrestees with disabilities?

Yes No

29. Does your agency have a formal arrangement to receive and handle internal (sworn officers or other employees) complaints dealing with Americans with Disabilities Act issues?

Yes No

30. Does your agency have a formal arrangement to receive and handle external (arrestees and other civilians) complaints dealing with Americans with Disabilities Act issues?

Yes No

This concludes the survey; please return the questionnaire in the envelope provided. Your time and cooperation is greatly appreciated. Thank you.